AT

UNITED
NATIONS

Administrative Tribunal

Distr.
LIMITED

AT/DEC/505
26 February 1991

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 505

Case No. 539: DAW THAN TIN

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Ahmed Osman, Vice-President; Mr. Arnold Kean;

Whereas at the request of Daw Than Tin, the Applicant herein and the widow of U Khin Maung Gyi, a former staff member of the Economic and Social Commission for Asia and the Pacific, hereinafter referred to as ESCAP, the President of the Tribunal, with the agreement of the Respondent, extended to 15 November 1989, the time-limit for the filing of an application to the Tribunal;

Whereas, on 6 November 1989, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 9 February 1990, the Applicant, after making the necessary corrections, again filed an application, containing pleas that read in part as follows:

"PLEAS

1. To rescind the decision of the Secretary-General rejecting:

a. The Joint Appeals Board's [JAB] conclusion contained in paragraph 49...

b. The JAB's conclusion contained in paragraph 54...

2. To uphold the findings of the JAB contained in paragraph 48 of its report to the Secretary-General...

a. To uphold the findings of the JAB contained in paragraph 51 of its report to the Secretary-General...

3. I request the Tribunal to order the Respondent to find out why my husband's medical file was destroyed as admitted by the United Nations Medical Director (paragraphs ... and 49 of JAB report dated 30 January 1989)...

4. To order the eye witnesses, namely U TIN NYUNT and Mr. Ajit M. BANERJEE respectively whose addresses are: 330 E 46th Street, Apartment 11M, New York 10017 and UN Department of Technical Co-operation and Development (UNDTCD), New York, to testify before the Tribunal since my husband died in their presence at ESCAP Headquarters.

...

6. I respectfully request the Tribunal to fix the amount of compensatory damages equal to two years' net base salary because of the material and moral injuries sustained by me due to the negligent delays and apparent incompetence of officials involved. The amount of monetary compensation which I received from the Organization, that is, ($US12,000) cannot be considered a fair sum..."

Whereas the Respondent filed his answer on 11 June 1990;

Whereas the facts in the case are as follows:

U Khin Maung Gyi was serving as a Regional Advisor in Public Administration in the Department of Economic and Social Affairs at ESCAP in Bangkok. Mr. Gyi took annual leave on 26 December 1968. At the request of the Special Assistant to the Executive Secretary, he resumed his duties at the office on 3 January 1969, to prepare for a visit of Budget Officers from Headquarters on 6 January 1969. According to the record of the case, he left his house for work at 7 a.m. and later in the morning, at 10 a.m., he collapsed in the office and died shortly thereafter.

The Applicant subsequently received payments to which she was entitled under the UN Staff Rules and Regulations, as well as a widow's benefit from the United Nations Joint Staff Pension Fund (UNJSPF). However, the Applicant was not informed of her rights under Appendix D to the Staff

Rules (Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on behalf of the United Nations).

On 20 March 1969, the Chief, Division of Administration, ESCAP, wrote to the Chief, Technical Assistance Recruitment Service (TARS) at Headquarters, regarding the terminal payments due to the Applicant. He sought confirmation that an exception could not be made to the pertinent provisions of Appendix D to the Staff Rules. In a reply dated 7 April 1969, the Chief of TARS stated that: "Since [Mr. Gyi] died as a result of a stroke which occurred while he was on duty, [he did] not believe that an exception [could] be made to article 1 (a) and (b) of Appendix D to the Staff Rules [sic]". Accordingly, ESCAP apparently deemed that Mr. Gyi's death had not "resulted as a natural incident of performing official duties" and that there were no grounds to grant an exception and hold the Organization responsible for his death.

It was only on 22 April 1980, that the Applicant filed a claim for compensation under Appendix D to the Staff Rules. After a lengthy exchange of correspondence between the Applicant and the Secretary of the Advisory Board on Compensation Claims (ABCC) and the Secretary of the ABCC and ESCAP, the Applicant's case was considered by the ABCC on 19 July 1982. The Applicant argued essentially that her husband's death was service incurred, and that she had only recently learned that she would have been entitled to compensation if her husband's death had been deemed attributable to the performance of official duties. As regards time-limits, she stated she was not aware they existed and argued that the question of a time-limit for submission of her claim would not have arisen had ESCAP submitted her case to the ABCC in time and not taken it upon itself to determine the nature of the death.

The ABCC recommended to the Secretary-General that the claim be rejected because it was not lodged within the time-limit provided by article 12 of Appendix D. In a letter dated 6 August 1982, the Secretary of the ABCC informed the Applicant that the Secretary-General, having considered the recommendation of the ABCC not to waive the time-limits provided for in the Rules and noting that a death such as her husband's was "not usually deemed by the ABCC as being attributable to the performance of official duties" had decided not to accept her claim.

After a lengthy exchange of correspondence between the Applicant and the Administration, on 5 April 1984, the Applicant lodged an appeal with the JAB. The Board adopted its report on 30 January 1989. Its considerations, conclusion and recommendations read as follows:

"Considerations, Conclusion and Recommendations

47. The Panel observed with concern the fact that the death of the appellant's husband, which had occurred while he was in his office, and the possible benefits which might accrue to the appellant as a result thereof, a matter of quite serious dimensions, was treated in a rather casual manner. Moreover, her possible rights under Appendix D to the Staff Rules were dismissed on the basis of one memorandum which contained an opinion on the subject, namely the memorandum from Mr. Michel [Chief, Technical Assistance Recruitment Service] to Mr. El Haj [Chief, Division of Administration, ESCAP] which stated 'I do not believe that an exception can be made to article 1(a) and (b) of Appendix D to the Staff Rules [sic]'. (Emphasis supplied).

48. The Panel is convinced that the appellant had a right to be advised of the possibility of pursuing a claim before the ABCC and that failure to so advise her constituted not only a basis for a waiver of time-limits under Appendix D, but also a violation of her derivative rights to due process as the widow of a former staff member.

49. The Panel notes that the Respondent has now conceded the error and agrees that the ABCC should have waived its time-limits and considered the claim on its merits. The Panel, however, feels that even if the Administration now agrees that the time-limits of Appendix D should have been waived by the ABCC, to do so now cannot restore the status quo ante and cannot revive the appellant's rights to a full and fair consideration of her claim. With the passage of time, evidence has been lost (the Medical Director referred to the medical file having been destroyed), witnesses have left the area, and the memories of those witnesses who remain have become less acute. It would appear to the Panel that at this time any hope of ascertaining whether or not the appellant's husband's death was attributable to performance of his job is highly unlikely.

50. The Panel also noted with concern the fact that the appellant was never given a detailed explanation of the reasons for rejecting her claim, as had been specifically

requested by Mr. Ruedas [Under-Secretary-General for Administration and Management]. Instead she received a reply which skirted around an examination of the merits and which advised the appellant that cases such as hers were 'not usually successful' before the ABCC. No in-depth examination of the facts was ever made, no witnesses were questioned, no medical records were studied.

51. The Panel also viewed with concern the delays imposed upon the appellant by the Organization at almost every stage of the proceedings. Aside from the delay in advising her of her rights, the Organization delayed still further when she sought consideration by the ABCC, and once again, when the matter was presented to the ARU [Administrative Review Unit]. The delays were of several months duration and on two occasions exceeded one year. The Panel viewed such delays as inexcusable.

52. Based upon the foregoing, the Panel concludes that the appellant was denied due process and was deprived [of] her rights as the widow of a former staff member.

53. For the inexcusable delays, the Panel recommends that the appellant be awarded the sum of $2,000.

54. With regard to the matter of compensation under Appendix D to the Staff Rules, the Panel concludes that it is highly unlikely that the appellant's claim could be fully and fairly considered on its merits at this time because of the unavailability of information which should have been considered earlier, and which would have been so considered had the Organization not violated the rights of the appellant. Accordingly, with a view to avoiding costly and possibly inconclusive proceedings before the ABCC, the Panel recommends that the appellant be awarded, in full and final settlement of her claim, the sum of $10,000 (equivalent to approximately six months' net base pay of her husband at the time of his death).

55. The Panel also recommends that the Organization ensure that standing procedures in all duty stations require all dependants (as defined in Appendix D) to be advised of their rights to make a claim for compensation under Appendix D to the Staff Rules, in the event that a staff member were to die while performing official functions."

On 6 February 1989, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined her case in the light of the Board's report, had decided:

"... in full and final settlement of [her] claim and taking into account the entire circumstances of [her] case, to grant [her] the sum of $12,000 on humanitarian grounds and to take no further action on the matter."

On 9 February 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The statute of limitations normally barring the Applicant's claim for death benefits should be waived because she was not notified of her rights as a beneficiary of her husband and could not reasonably be expected to have been aware, either of these rights or of the time limitations governing determination of their award.

2. The death of the Applicant's husband is directly attributable to the stress and the time pressures of the work he was performing on the date of his death, such work being a matter of urgency warranting his premature return from annual leave.

3. The circumstances surrounding his death suggest that the Applicant's husband might not have died had he received adequate medical care. This point cannot be properly discovered because the UN Medical Service destroyed his file.

Whereas the Respondent's principal contentions are:

1. Payment of compensation was in full and final settlement and acceptance thereof bars any further action.

2. In the absence of a legal obligation to pay, the Secretary-General's decision to accept a unanimous JAB recommendation to grant an ex-gratia payment was a valid exercise of discretion.

The Tribunal, having deliberated from 14 February to 26 February 1991, now pronounces the following judgement:

I. The Tribunal notes that the Respondent has waived the time-limits which might otherwise have been applicable.

II. The Respondent contends that compensation has been paid to the Applicant in full and final settlement of her claim, so as to preclude further action. For the following reasons, the Tribunal cannot accept this contention in this case. The letter addressed to the Applicant dated 6 February 1989, by the Under-Secretary-General for Administration and Management informed the Applicant as follows:

> "The Secretary-General, having re-examined your case in the light of the Board's report, has decided, in full and final settlement of your claim ... to grant you the sum of $12,000...". (Emphasis added)

This was a unilateral decision rather than an offer which the Applicant might have accepted or rejected. Even if the letter in question, followed by payment of $12,000 to the Applicant, could be construed as an offer followed by acceptance, so as to constitute a contract settling her claim, the letter itself is inconsistent with such a construction in that it specifically states that the Applicant may have recourse to the Tribunal. Such recourse would be meaningless if the claim had previously been barred by a contract of full and final settlement.

III. The Tribunal therefore proceeds to examine the substance of the claim. It is aware that it cannot substitute its own opinion for that of the UN Medical Director to the effect that the death of the Applicant's husband was not attributable to the performance of official duties on behalf of the United Nations. The Tribunal must, however, consider whether the opinion of the UN Medical Director was given on the basis of evidence either inadequate or flawed for any other reason which may have interfered with the full and fair consideration of her claim. The Tribunal concurs in the view of the Joint Appeals Board (JAB) that:

> "With the passage of time, evidence has been lost (the Medical Director referred to the medical file having been destroyed), witnesses have left the area, and the memories

> of those witnesses who remain have become less acute. It would appear to the Panel that at this time any hope of ascertaining whether or not the appellant's husband's death was attributable to performance of his job is highly unlikely."

IV. In the Tribunal's view, the Applicant was in no way to blame for the passage of some 11 years before she filed her claim under Appendix D. This resulted from the Administration's failure to draw her attention to her rights under Appendix D and to the time within which a claim under that Appendix has to be made. The Respondent's waiver of the time-limit does not alter the fact that the evidence had evaporated, and in the case of the medical file wholly disappeared, as stated by the JAB. The Tribunal regards this as negligence on the part of the Administration and notes the recent Amendment No. 3 to Personnel Directive PD/4/78, dated April 1989, which indicates that the Personnel Officer will render such assistance to the deceased staff member's spouse, dependents, next of kin or designated beneficiaries as may be required to determine settlements and to settle payments.

V. The Tribunal finds it difficult to evaluate the injury suffered by the Applicant, bearing in mind that the amount of compensation (if any) which might have been awarded had the Administration not been negligent is a matter of speculation, and in particular that the advice of the UN Medical Director, had he been in possession of all relevant evidence, including the destroyed medical file, cannot be known. Taking all the circumstances of the case into consideration, the Tribunal considers that the sum of $12,000 already paid to the Applicant, does not provide adequate compensation for the consequences of the fault of the Administration and that a further sum of $15,000 should now be paid as damages.

VI. For the foregoing reasons, the Tribunal orders the Respondent to pay to the Applicant the sum of $15,000 in addition to the sum of $12,000 previously paid.

VII. All other pleas of the Applicant, including her request to call witnesses, are rejected.

(Signatures)

Roger PINTO
President

Ahmed OSMAN
Vice-President

Arnold Kean
Member

New York, 26 February 1991

R. Maria Vicien-Milburn
Executive Secretary

UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/506
26 February 1991

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 506

Case No. 535: BHANDARI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, Vice-President, presiding; Mr. Ioan Voicu; Mr. Luis de Posadas Montero;

Whereas at the request of Reena Bhandari, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 8 February 1990, the time-limit for the filing of an application to the Tribunal;

Whereas, on 2 February 1990, the Applicant filed an application, containing the following pleas:

> "The appellant respectfully requests the Administrative Tribunal to:
>
> (a) Determine that her entry level should be corrected to the P-3 level, rather than the P-2 level that was given to her, with effect from the date of her initial appointment, i.e. 17 September 1985.
>
> (b) Compensate her for denial of promotion prospects from the P-3 to the P-4 level after the two-year qualifying period considered for women staff members.
>
> (c) Recommend her for appointment to the next available P-4 post within the Department and to recommend her promotion to the P-4 level thereafter under the Vacancy Management Scheme.
>
> (d) Compensate her for the loss of remuneration, negative impact on career prospects within the service, and mental anguish."

Whereas the Respondent filed his answer on 24 May 1990;

Whereas the Applicant filed written observations on 31 July 1990;

Whereas, on 1 February 1991, the presiding member of the panel ruled that no oral proceedings would be held in the case;

Whereas the facts in the case are as follows:

Reena Bhandari entered the service of the United Nations on 19 September 1983. She was initially offered a short-term appointment at the P-3 level, under the 300 Series of the Staff Rules, for the duration of the General Assembly. The Applicant served thereafter on a series of special service agreements from January 1984 to September 1985.

The General Assembly, at its 32nd session, had approved the establishment of a P-3 post at the Department of Public Information (DPI) for the 1978-1979 Budget Biennium in order to recruit an additional Radio Officer "with a knowledge of Hindi and special experience in current radio practice in [Asia]".

On 12 April 1984, the Administration issued a Vacancy Announcement to advertise a post of Radio Producer in the Radio and Visual Services Division of DPI. The announcement stated that although the functions of the post were classified at the P-3 level, the post was funded at the P-2 level and appointment would be made at that level. The qualifications required for the post were described as follows: "Advanced university degree in journalism. Two years' professional radio experience, ... Candidates with first level university degree and at least four years of exceptionally relevant professional experience may be considered. Languages: fluency in Hindi and English".

The Applicant applied for the post and was selected. On 5 September 1985, she was offered a two-year fixed-term appointment as Associate Radio Producer at the P-2, Step VI level. In accepting the offer on 9 September 1985, she stated: "I hereby accept this offer ... with the attached appeal...". The appeal was contained in a letter dated 9 September 1985, to the Recruitment Officer, requesting that her entry level be retroactively corrected to P-3. On 26 September 1985, the Applicant signed a Letter of Appointment for a fixed term of two years at the P-2, Step VI level, without attaching any conditions.

On 8 November 1985, the Applicant reiterated her request for correction of her entry level in a letter to the then Deputy Director and Chief, Division of Recruitment, Professional Recruitment Service, Office of Personnel Services (OPS) on the ground that she had originally been recruited by the UN at the P-3 level and that another staff member had been recruited for an "identical post", in the same unit, at the P-3 level, resulting in unequal treatment between herself and the incumbent of the other post.

In a reply dated 27 November 1985, the Deputy Director, Division of Recruitment, Professional Recruitment Service, OPS, rejected her request, essentially on the grounds that the Vacancy Announcement had clearly indicated that the post would be funded at the P-2 level. He noted that at least five other posts in the Radio Service of the Radio and Visual Services Division had been filled in similar circumstances. In addition, in order to qualify for a P-3 level appointment, a Master's degree and six years of full-time relevant, progressive and diversified professional experience or a Bachelor's degree and eight years of the same experience were required. The offer made to the Applicant on 5 September 1985, had granted her the highest step possible under the then current guidelines.

On 27 May 1986, the Chief, Radio Service, DPI, supported the Applicant's request for correction of her entry level to P-3 and proposed vacant alternative P-3 posts with which to fund the Applicant's upgrading. The Director of the Radio and Visual Services Division endorsed his request.

In a letter dated 15 September 1986, the Applicant reiterated her request for correction of her entry level to the then Assistant Secretary-General, OPS. On 20 January 1987, the Assistant Secretary-General, OPS, informed the Applicant that it was not possible to correct the original offer of appointment at the P-2, Step VI level. He noted, however, that, as he understood the Applicant had been "performing outstandingly at the P-3 level", OPS would give its "full support" to her case should DPI recommend her for accelerated promotion.

DPI did not recommend the Applicant for an accelerated promotion in connection with the 1986 promotion review. Although the Applicant instituted a recourse procedure, requesting the Appointment and Promotion

Committee (APC) to include her name on the Promotion Register, she was unsuccessful in this regard. According to the record of the case, during its review of the Applicant's case, the APC "urged the [Appointment and Promotion] Board to communicate its deep concern regarding this irregular situation and to express its hope that the Office of Human Resources Management* [OHRM] could initiate administrative corrective action to redress [Ms. Bhandari's] situation".

In two letters dated 13 April 1988 and 23 June 1988, addressed to the Assistant Secretary-General, OHRM, the Applicant reiterated her requests for correction of her entry level to P-3. On 20 July 1988, the Officer-in-Charge, OHRM, informed the Applicant that after a further review of her case, OHRM had decided to maintain its original position and therefore no further action was warranted, although DPI might wish to review her case in regard to the 1987 promotion review.

On 25 July 1988, the Applicant requested administrative review of the decision not to correct her entry level from P-2 to P-3. On 2 September 1988, the Assistant Secretary-General, OHRM, informed the Applicant that he maintained his decision on the grounds that the post was funded at the P-2 level, that the qualifications sought for the incumbent were those for recruitment at the P-2 level, that her qualifications on appointment were only at the P-2 level and that she had accepted the offer of appointment at the P-2 level.

On 30 September 1988, the Applicant lodged an appeal with the Joint Appeals Board (JAB) which, according to the record of the case, she later withdrew subject to her counsel's attempt to resolve her case outside the appellate process. As this effort was unsuccessful, she resubmitted her appeal on 16 January 1989. The Board adopted its report on 5 June 1989. Its conclusions and recommendation read as follows:

"Conclusions and Recommendation

53. The Panel decides first to waive time-limits described in staff rule 111.2 on grounds of exceptional circumstances.

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* Successor of OPS.

54. The Panel concludes that the appellant's short-term appointment under the 300 Series of the Staff Rules gave her no entitlement to subsequent appointment at the P-3 level under the 100 Series.

55. The Panel also concludes that the appellant was performing P-3 functions for which she was fully qualified, and that she was recruited at the P-2 level solely for budgetary reasons because the funding for her post had been improperly channelled (redeployed) to benefit another staff member.

56. The Panel concludes further that since the Organization's pay system is founded on salary levels linked to areas of responsibility determined through classification, the level of the appellant's functions since the date of recruitment required that she be recruited and paid at the P-3 level.

57. Accordingly, the Panel recommends that the appellant's level of entry at recruitment be corrected retroactively to P-3, Step I, with effect from 17 September 1985.

58. The Panel makes no further recommendation in support of this appeal."

On 8 August 1989, the Acting Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined the case in the light of the Board's report, had decided to maintain the contested decision. The letter read in part as follows:

"... Correction of entry level is an exceptional procedure normally available within a year of initial recruitment and limited to circumstances not applicable to your case. Vacancy Announcement No. 84-B-DPI-018-NY pursuant to which you accepted employment with the Organization specifically indicated that although the functions of that post were classified at the P-3 level, the post was funded at the P-2 level and appointment would be made at that level. This was so because post UNA-27701-E-P-2-018 was budgeted at that level. As you are aware, it is only the General Assembly, through the Budget, that has the authority to establish the level of a post. Classification actions for Professional and higher posts, until accepted by the General Assembly, are not sufficient for budgetary

purposes. In addition, the Secretary-General's discretionary authority to appoint a candidate at a level below that advertised was also indicated in the same Announcement".

On 2 February 1990, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent improperly rejected the Joint Appeals Board's recommendation and conclusions of 5 June 1989.

2. The Applicant's level of previous employment at the same job should have determined her entering qualifications at the P-3 level.

3. The Respondent has deprived of content the regulation providing for correction of entry level.

4. The Respondent has admitted that the Applicant's post was funded by the General Assembly in its 1978-79 Budget Biennium at the P-3 level.

Whereas the Respondent's principal contention is:

The entry level of the Applicant's appointment was properly determined in accordance with established policies.

The Tribunal, having deliberated from 11 February to 26 February 1991, now pronounces the following judgement:

I. The Applicant requests the Tribunal to determine that her entry level should be corrected to the P-3 level, to compensate her for denial of promotion, to recommend her for appointment to the next available P-4 post and to compensate her for the loss of remuneration and mental anguish inflicted.

II. Of these pleas, the first is fundamental. The remainder of the redress sought is closely linked to the acceptance or not of the Applicant's request to correct her entry level. In fact, the Applicant's claims for compensation for lost promotion prospects and recommendation for a promotion to the P-4 level, are only a consequence of the Applicant having been hired for a P-3 post but paid at the P-2 level.

III. In view of this, the Tribunal addresses itself, first, to whether the Applicant is entitled to correction of her entry level.

In this regard, there is no dispute that a vacancy announcement was issued for a P-3 post, but with the proviso that the person hired would be recruited and paid at the P-2 level. In addition, the qualifications required in order to be considered for the post were reduced to enable employment of a candidate who would be eligible for recruitment at the P-2 level, but not at the P-3 level. The Applicant, aware of these circumstances, applied for the post and the post was offered to her. She accepted the offer, attaching an appeal to her acceptance and signed her Letter of Appointment a few days later without further reservations. Subsequently, the appeal, in which she requested retroactive correction of her entry level to P-3 was turned down. As a consequence, the Applicant has performed duties at the P-3 level but has been remunerated at the P-2 level.

IV. In the Tribunal's view, there are two decisive issues raised by the application: first, whether any legal requirement was violated by the Administration's action in deciding, for financial reasons, to recruit at the P-2 level for a post that was classified at the P-3 level; second, whether the Applicant's actions constitute acceptance of the offer for recruitment at the P-2 level.

V. With respect to the first issue, the Tribunal is unable to find and has not had its attention drawn to any legal requirement specifically prohibiting the Respondent from recruiting at the P-2 level for a post classified at the P-3 level, when the qualifications for the post are reduced to permit recruitment of a person who does not have P-3 qualifications. By analogy, administrative instruction ST/AI/277, para. 7 indicates that, in the context of an upward post reclassification, it is permissible for an incumbent to continue to be remunerated on the basis of the incumbent's lower grade even though the level of the post is higher. Accordingly, the Tribunal does not find the Administration's action invalid.

VI. With respect to the second issue, it is clear that the Applicant was in no way deceived or misled regarding the level at which recruitment was being offered to her and it was open to her to decline the offer if she was dissatisfied with it. She chose not to follow that course, but instead purported, at first, to accept the offer with a proviso, in effect challenging it and later signed the Letter of Appointment without any condition. In view of the Tribunal's finding that the recruitment offer was permissible, the Tribunal concludes that the Applicant was not entitled to accept conditionally the offer of employment and it regards that action as ineffective. Her subsequent signature on the Letter of Appointment, without any purported condition, was an effective acceptance of a lawful contract of employment.

VII. In this case, the Applicant asserts that she was qualified for recruitment at the P-3 level and the Joint Appeals Board (JAB) accepted this contention. However, the Tribunal's review persuades it that the JAB erred on this point and that the Applicant's combination of education and work experience did not qualify her for recruitment at the P-3 level. But this matter is of no consequence since it has no effect upon the outcome of this case. The Tribunal, however, observes in this regard that as significant questions of personnel policy and practice may be involved in situations in which a person is recruited for, or fills a post at a level below that at which the post is classified, the proper authorities should perhaps consider whether this ought to be the subject of definitive rules or limits.

VIII. The Applicant asserts that since her post is classified at the P-3 level, her remuneration must be at the P-3 level in order for it to comply with the principle of equal pay for equal work. The Tribunal finds that this principle has no bearing on this case.

IX. The Applicant has also suggested that her prior employment by the Organization under short-term contracts entitled her to be recruited at the P-3 level for the post in question. The JAB found no merit in this contention and, for the same reason, neither does the Tribunal. In

addition, the Applicant's acceptance of her P-2 appointment renders her contention academic. Nor does the Tribunal find any evidence of prejudice against the Applicant associated with the financial considerations underlying the decision of the Administration to recruit at the P-2 level for the Applicant's post. There is nothing indicating that the redeployment of the P-3 post, which had been authorized and budgeted, was unlawfully motivated or otherwise improper. This is a managerial matter within the reasonable discretion of the Respondent.

X. For the above-mentioned reasons, the Tribunal finds that the Applicant is not entitled to correction of her entry level. This finding renders the rest of her pleas groundless. These could only have been entertained if a correction in the Applicant's entry level were proper. As a consequence, the Tribunal finds that the Applicant is not entitled to compensation for denial of promotion or for loss of remuneration as requested in her pleas.

The Tribunal also finds that it is not within its competence to recommend the Applicant for a promotion to the P-4 level.

XI. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Ioan VOICU
Member

Luis de POSADAS MONTERO
Member

New York, 26 February 1991

R. Maria VICIEN-MILBURN
Executive Secretary